

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:18-cv-559-MOC  
(3:17-cr-180-MOC-DSC-1)**

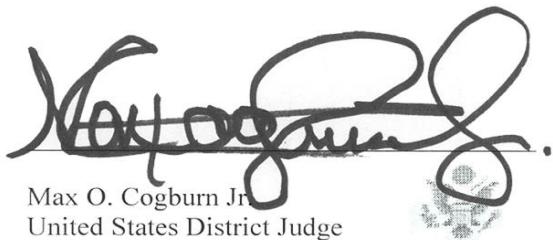
<b>ERNEST KEITH, JR.,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>vs.</b>	)	<b>ORDER</b>
	)	
<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Respondent.</b>	)	
	)	

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**THIS MATTER** is before the Court on Petitioner's *pro se* Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255, that was docketed on October 12, 2018, (Doc. No. 1). The Judgment is presently before the Fourth Circuit Court of Appeals on direct appeal. See (3:17-cv-180, Doc. No. 35). As such, the judgment and sentence are not yet final and the § 2255 Motion to Vacate is premature. See generally *United States v. Gardner*, 132 Fed. Appx. 467 (4<sup>th</sup> Cir. 2005). The Court will, therefore, dismiss the Motion to Vacate without prejudice for Petitioner to refile the petition after the Judgment becomes final following direct appeal. See generally 28 U.S.C. § 2255(f)(1).

**IT IS, THEREFORE, ORDERED** that Petitioner's Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255, (Doc. No. 1), is **DISMISSED** without prejudice as premature.

Signed: November 19, 2018



Max O. Cogburn Jr.  
United States District Judge